

## Summary

### Air Management Study Group Meeting

Tuesday, November 29, 2016

9:00 am - noon

Wisconsin Veterans Museum, Room 208

30 W. Mifflin St., Madison, WI

### Attendees

Renee Bashel, DNR  
David Bizot, DNR  
Phillip Bower, Husch Blackwell  
James Bridges, DNR  
Marty Burkholder, DNR  
Tyson Cook, Clean Wisconsin\*  
Craig Dousharm, Mercury Marine  
Steve Dunn, Alliant Energy  
John Gibbons, Generac  
Gail Good, DNR  
Rob Harmon, Bemis Co.  
Art Harrington, Godfrey & Kahn\*  
Kristin Hart, DNR  
Chris Hiebert, SEWRPC\*  
Joseph Hoch, Alliant Energy  
Eric Hoven, Dairyland Power  
Jeff Jaeckels, MGE\*

Kara Koonce, DNR  
Ann McKeon, DNR  
Andrea Morgan, US EPA, Region 5  
Paul Orłowski, Generac  
Todd Palmer, Michael Best\*  
Katie Praedel, DNR  
Jennifer Rashel, DNR  
Renee Smits, Spectrum Engineering  
Jasmine Sodemann, Gannett Fleming  
Kathleen Standen, WEC Energy Group  
Andrew Stewart, DNR  
Patti Stickney, SEH Inc.  
Mike Szabo, DNR  
Rob Thiboldeaux, DHS  
Mark Thimke, Foley & Lardner  
Lucas Vebber, WMC\*

\* Air Management Study Group (AMSG) members

### Action Items

- **Next meeting.** The next study group meeting will be held on **Thursday, February 23, 2017** at 9 a.m. at the State Natural Resources Building (GEF 2), Room G09, 101 S. Webster St., Madison.
- **Litigation update.** DNR was asked to provide an update on current ozone regulation litigation activities; 2015 Ozone NAAQS and the Cross State Air Pollution Rule (CSAPR) Update and will consider providing this, if applicable, at the **February 23, 2017** AMSG meeting.
- **Stakeholder 14\*working group for Phase II of Permit Streamlining.** Anyone interested in participating in this work group should contact Kristin Hart at [kristin.hart@wisconsin.gov](mailto:kristin.hart@wisconsin.gov).
- **2008 ozone NAAQS attainment demonstration.** DNR to provide update on attainment demonstration and modeling efforts for the Kenosha County (partial nonattainment) and Sheboygan County nonattainment area at next meeting.

- **EPA proposed rules and guidance currently open for comment.** DNR may comment on the following EPA proposed rules and guidance and welcomes input and feedback from the study group ([see slide 6 of the November 29, 2016 presentation](#))
  - Revisions to the Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Permitting Regulations and Establishment of a Significant Emissions Rate (SER) for GHG Emissions under the PSD Program. **Comments due to EPA by December 16, 2016.**
  - Notice of Availability of Three Updated Chapters in the Environmental Protection Agency's Air Pollution Control Cost Manual. **Comments due to EPA by December 21, 2016.**
  - Proposed Information Collection Request; Comment Request; Implementation of the Ambient Air Protocol Gas Verification Program. **Comments due to EPA by January 3, 2017.**
  - Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements. **Comments due to EPA by January 17, 2017.**

## Meeting Summary

### Opening remarks and agenda review

Gail Good, Air Program Director

Ms. Good opened the meeting and thanked everyone for attending in the alternate venue at the Wisconsin Veterans Museum. The agenda for the meeting was reviewed and a request for agenda repair items solicited from the members and additional attendees in attendance. Mr. Palmer requested a discussion on the state challenge to the Cross State Air Pollution Rule (CSAPR) Update rule.

### Program updates

#### DNR Guidance

Kristin Hart, Permits & Stationary Source Modeling Section Chief

The DNR recently proposed [draft guidance on Air Quality Background Concentrations](#) to provide internal and external stakeholders background concentrations to be included in air quality dispersion analysis. The draft guidance provides background concentrations for the recently promulgated one hour (1-hr) sulfur dioxide (SO<sub>2</sub>) and nitrogen dioxide (NO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS), following existing WDNR methods. DNR is evaluating comments received from EPA on the updated guidance.

#### Comments on Federal Rules

Kristin Hart, Permits & Stationary Source Modeling Section Chief

David Bizot, Regional Pollutants and Mobile Sources Section Chief

Ms. Hart and Mr. Bizot briefly summarized a list of federal proposed rules that DNR had recently submitted comments (see slide 5 of the November 29, 2016 presentation available at <http://dnr.wi.gov/topic/airquality/amstudygroup.html> under the "Past meetings" tab; the docket numbers in the slides are links to the submitted comments). The DNR has been soliciting input from the study group on federal proposed

rules when DNR may be submitting comments, and will continue to do so. Anytime a relevant federal rule is proposed, study group members may presume the department is considering developing comments and should feel free to offer input.

The DNR recently submitted comments on: Draft Guidance on Significant Impact Levels for Ozone and Fine Particles in the Prevention of Significant Deterioration Permitting Program (September 30, 2016); Revisions to the Petition Provisions of the Title V Permitting Program (October 24, 2016); Reclassification of the Sheboygan, Wisconsin Area To Moderate Nonattainment for the 2008 Ozone NAAQS (October 28, 2016); Air Plan Approval: Wisconsin; NO<sub>x</sub> as a Precursor to Ozone, PM<sub>2.5</sub> Increment Rules and PSD Infrastructure SIP Requirements (October 31, 2016); and Clean Energy Incentive Program Design Details (October 31, 2016).

The DNR is evaluating several federal proposed rules to determine whether to develop comments. Proposed rule specific comments are due to EPA between December 16, 2016 and January 17, 2017 (see Action Items on p. 1). The DNR is accepting feedback from the study group on potential comments.

#### Monitoring Trends Report

Katie Praedel, Air Monitoring Section Chief

DNR is in the process of finalizing the annual Wisconsin Air Quality Trends report for 2016. The report will be distributed publicly in December 2016 on the DNR Air Monitoring website.  
(<http://dnr.wi.gov/topic/AirQuality/Trends.asp>)

The annual report highlights monitoring data trends for ambient concentrations of criteria pollutants throughout the state, including ozone, fine and inhalable particles, sulfur dioxide, nitrogen dioxide, lead, and carbon monoxide. In general, concentrations of the criteria pollutants have been decreasing over the past decade in all regions of the state.

Ms. Praedel presented graphs on the annual PM<sub>2.5</sub> design value trends from 2001 through 2015 for the southeast region of the state and for inland region of the state (see slide 9 of the November 29, 2016 presentation ([see slide 9 of the November 29, 2016 presentation](#))). The monitoring trends show ambient concentrations of PM<sub>2.5</sub> below the NAAQS, and decreasing, for all regions of the state.

#### Calendar Year 2017 AMSG Meeting Dates and Priorities

Gail Good, Air Program Director

Potential dates for the 2017 quarterly study group meetings were introduced at the August 25 AMSG meeting. Ms. Good had requested feedback on those meeting dates and asked the members and additional attendees present if there were any issues with the proposed 2017 dates. Ms. Good had not received any feedback from the previous meeting and no one in attendance objected to the proposed 2017 meeting dates: February 23, June 8, August 24, and November 30.

Ms. Good presented proposed AMSG Priority Topics to address in 2017 (see slide 11) and solicited feedback from members and additional attendees in attendance. Mr. Vebber requested ozone regulation added to the list, with an eye on implementation and litigation. Mr. Palmer asked about the recent challenge by the State on the final CSAPR Update rule, filed on November 22, 2016. Ms. Good stated that this was a recent filing. Mr. Vebber and Mr. Palmer requested an update on ozone litigation activities at the February 23, 2017 AMSG meeting.

Mr. Cook expressed his continued interest in the ongoing permit streamlining activities. Mr. Palmer identified several items on the list that were of interest and asked if the item on alternate enforcement options hadn't already

been addressed. Mr. Stewart stated that alternative enforcement options had been previously discussed with AMSG and that any changes would most likely require legislative changes.

Mr. Harrington suggested that long range planning in regards to the incoming federal administration be added to the 2017 priorities list.

## **Member updates**

Ms. Good asked the study group members and additional attendees to provide updates to the group, as relevant.

### Lucas Vebber, Wisconsin Manufacturers & Commerce

Mr. Vebber stated that WMC had submitted comments to the federal docket on EPA's proposed reclassification of the Sheboygan County nonattainment area from "marginal" to "moderate" for the 2008 ozone NAAQS.

### Rob Thiboldeaux, DHS

DHS is working with the WE Energies Oak Creek power plant on community complaints of fugitive dust from the coal piles, stack emissions and air pollution from trains moving in and around the facility. Mr. Thiboldeaux stated that the power plant has been receptive in addressing the complaints.

### Chris Hiebert, Southeastern Wisconsin Regional Planning Commission (SEWRPC)

Mr. Hiebert reported that SEWRPC completed its long range regional transportation and land use plan (Vision 2050, adopted by SEWRPC on June 28, 2016). SEWRPC has worked with DNR on the 2008 ozone NAAQS attainment demonstration for the State Implementation Plan (SIP) and the 2015 ozone NAAQS designation recommendations.

### Todd Palmer, Michael Best & Friedrich LLP

Mr. Palmer is working with the Wisconsin Paper Council (WPC) on comments for proposed federal rules and will share them with DNR.

Mr. Palmer also mentioned that EPA has been using section 114 of the Clean Air Act to request fence-line PM<sub>10</sub> monitoring for fugitive emissions from outdoor storage piles at Petroleum Coke in Chicago. Mr. Palmer believes this is aggressive use of section 114, and EPA could expand future section 114 requests beyond Pet Coke storage piles. Additionally, industrial sources have technical and legal concerns about the finalized CSAPR Update rule.

### Jeff Jaeckels, Madison Gas & Electric (MGE)

MGE is having internal discussions on current and on-the-horizon regulatory impacts to their facilities. MGE has increased utilization of the West Campus Cogeneration Facility in Madison such that CSAPR and acid rain regulations are applicable.

### Art Harrington, Godfrey & Kahn S.C.

Mr. Harrington is working with client concerns surrounding biogas RINs (Renewable Identification Numbers). Mr. Harrington also was recently involved with a university club forum on autonomous vehicles and transportation planning, with an eye on potential mobile source emission reductions.

### Kathleen Standen, WEC Energy Group

CSAPR Update planning and ozone NAAQS issues are of interest to utilities.

## Permit Streamlining

Kristin Hart, Permits & Stationary Source Modeling Section Chief

Ms. Hart provided a brief history of the DNR permit streamlining efforts. Phase I of the Permit Streamlining Rule that was finalized in December 1, 2015, which fulfilled a statutory requirement to create a “Natural Minor” operation permit exemption. Six facilities have utilized the exemption so far and additional outreach efforts are under way. Type B Registration Permits were finalized in February 2016, which also fulfilled a statutory requirement. Twenty seven facilities have been issued coverage under the ROPB at slide publication. and outreach is ongoing. Phase I also exempted restricted use engines from construction and operation permits, streamlined procedures, and cleaned up confusing rule language.

Phase II of the Air Permit Streamlining rule is kicking off. Phase II of the approved 2012 scope statement aims to address the statutory requirement to define “cause or exacerbate”, consider an administrative revision process for construction permits, consider “like-kind replacement” exemption from minor source construction permits, and consider additional clean up and streamlining of procedures.

DNR intends to begin drafting rule language early in 2017 and plans on setting up stakeholder working meetings in January, April and June to understand needs and concerns and to hear other ideas. DNR will then work to step this rule through the rulemaking process as expeditiously as possible. Anyone interested in being part of the work group should contact Ms. Hart at [kristin.hart@wisconsin.gov](mailto:kristin.hart@wisconsin.gov). (see Action Items on p. 1)

A question was raised on addressing NR 445.09 for diesel emissions in Phase II. Ms. Hart stated that the approved scope statement did not allow for the concerns raised to be addressed in the Permit Streamlining efforts. Ms. Hart offered to convene a meeting with interested parties to ensure everyone had an opportunity to understand the specifics of s. NR 445.09 and how it is being implemented.

## SSM SIP Workgroup

Kristin Hart, Permits & Stationary Source Modeling Section Chief

Ms. Hart reviewed certain acronyms and definitions with the study group and provided a brief history of Startup/Shutdown/Malfunction (SSM) issues leading to a SSM SIP call by EPA impacting 36 states. Wisconsin was not included in the SIP call. EPA was sued by MEDC to include Wisconsin in the SIP call due to language in the Administrative Code under NR 431.05(2) and 436.03(2)(b). EPA has informed Wisconsin that it will receive a SIP call.

Litigation related to EPA’s SIP call (Walter Coke v. EPA (D.C. Cir., 15-1166)) is under way. Oral arguments are slated before the end of 2016, but petitioners did not obtain a stay and revised SIPs were due to EPA on November 22. Those SIPs must remove or revise rule language to conform to current guidance and may not include automatic exemptions, nor offer affirmative defense to enforcement or penalties, for exceedances during SSM events.

Ms. Hart listed the approaches EPA says states could change rules. Amending rules to include alternative limits, controls, or work practices that would apply during SSM scenarios is the most straight forward approach, but require updates to many rules in the Wis. Adm. Code. In use of “enforcement discretion” to decide whether to pursue enforcement actions for SSM situations, SIP rules must include criteria and procedures for enforcement discretion, which would be a higher bar to clear for EPA approval.

The SSM Workgroup last met in August 2016. DNR will continue to monitor other proposed state rules, and the outcome of ongoing litigation. DNR continues to review requests under s. NR 436.03, Wis. Adm. Code.

Mr. Harrington asked if permittees are covered under NR 436.03 language since it is part of (air pollution control) permit Part II conditions (*General Permit Conditions for Direct Stationary Sources*) and if exceptions granted under 436.03 would be honored by EPA. Ms. Hart said that DNR is still approving requests under 436.03 but includes a statement in any such approvals that the EPA has notified the DNR of its intent to issue a SIP call on 436.03. Mr.

Palmer stated that if NR 436.03 were part of the SIP, then exceptions approved by DNR under 436.03 would have to be honored by EPA since there is not, as yet, a SIP call on the Wisconsin rule.

## **Ozone – 2008 Ozone NAAQS Implementation; 2015 Ozone NAAQS Area Designations; 2016 Data and Design Values**

David Bizot, Regional Pollutants and Mobile Sources Section Chief

### 2008 Ozone NAAQS

Mr. Bizot provided an update to the 2008 ozone NAAQS nonattainment areas. The partial Kenosha County (Chicago metro) NAA did not attain the 2008 standard by the July 20, 2015 “marginal” attainment date. Sheboygan County NAA also did not attain by July 20, 2015. Sheboygan County received a one-year extension to July 20, 2016, but did not attain. Per the CAA, areas that fail to attain by required date must get “bumped-up” to next higher classification – in this case, “moderate.” EPA finalized Kenosha/Chicago bump-up in May 2016. EPA proposed Sheboygan bump-up in September 2016. Finalization expected in mid-December 2016 (update: since the meeting, EPA notified WDNR of a December 19 publication date). The nonattainment areas will have to come into attainment by July 20, 2018 – in practice, this means by the end of the 2017 ozone season.

DNR will need to complete attainment demonstration plans for both areas by January 1, 2017. These plans are currently in development with technical work/modeling through LADCO as part of the weight-of-evidence. In practice, little changes as a result of the bump-up. The two nonattainment areas already meet most moderate area requirements due to past nonattainment history (such as vehicle emissions testing and NOx RACT). The major source threshold remains 100 tons; however the offset (emission reduction) ratio changes from 1.1:1 to 1.15:1. One change for 2017 and forward is that the ozone monitoring season will begin on March 1 (instead of April 15) as a requirement of the promulgated 2015 ozone NAAQS.

Ms. Standen asked what Illinois and Indiana have done so far. Mr. Bizot said that LADCO goes to the states for emissions inventories in order to obtain the latest data to be used for attainment modeling projections. Any discussions with stakeholders and EPA will be determined after the modeling is completed, since it is only at that point that we will know how the modeling predicts future concentrations. Mr. Hoch requested an update on these efforts at the February 23 AMSG meeting. (see Action Items on p. 1)

### Ozone ambient monitoring

Mr. Bizot presented a table showing the preliminary 2014 – 2016 design values and 2017 critical values (slide 31 of the of the November 29, 2016 presentation). Ms. Praedel stated that DNR was targeting March 2017 for early certification of the 2016 data. Two monitors, Chiwaukee Prairie and Sheboygan-Haven, preliminarily showed exceedances of the 2008 ozone NAAQS. Nine monitors, all along the Lake Michigan shoreline, preliminarily showed exceedances of the 2015 ozone NAAQS. The number of violating areas does not mean air quality has degraded, but rather reflects a warmer summer and lower standard.

Mr. Harrington expressed that transport of ozone is almost exclusively the cause of nonattainment in those designated areas, which is frustrating to local sources that are now subject to increased regulation. Mr. Harrington also noted that the higher ozone concentrations are along the shoreline and that the two areas that had paired monitors (Sheboygan and Kenosha) showed decreased concentrations at the inland monitors. Mr. Harrington questioned whether there should be additional monitors and who could pay for them. He noted that perhaps bifurcating impacted counties would help the local sources. Harrington stated that it’s important that the public know about this data for public health reasons. Mr. Vebber concurred.

Mr. Bizot stated that the big picture is to reduce ozone precursors from sources beyond Wisconsin impacting these monitors so that these areas will attain and maintain the standards. There are potential future opportunities for discussions with EPA on this topic.

### 2015 Ozone NAAQS

Slide 33 of the November 29 presentation shows the timeline for establishing area designations under the 2015 ozone NAAQS. The Governor's office submitted a recommendation on September 21, 2016 that all Wisconsin counties be designated as attainment. The Air Program will have the opportunity to submit additional information to EPA regarding the designation recommendations between October 2016 and June 2017, after the 2016 ozone season is finished but before EPA proposes the area designations. EPA may consider 2017 data (i.e. 2015-2017 design values) for their October 1, 2017 designations, even though the 2017 ozone season will not be completed until October 31.

Ms. Hart stated that the impacts for newly designated nonattainment areas would be a change in major source permitting thresholds from 250 tons to 100 tons for projects triggering NSR. Mr. Harrington said that there may be an opportunity for offset markets; emission reductions could be certified by the Department for future trading in the nonattainment areas. Mr. Palmer stated that VOC emission credits were being sold for approximately \$300,000/ton in the Houston area.

### **Other Topics**

Ms. Good asked the study group members and additional attendees if there were any additional topics they would like to discuss with the group, as relevant.

Mr. Hoch asked if the Lake Michigan ozone study that is being conducted with NASA and others in 2017 is still a go. Mr. Bizot stated that the project is still on track. Mr. Harrington asked about the research goals of the project. Mr. Bizot stated it depends on the results but the goal is to better understand how ozone is formed and the meteorological impacts on formation and transport, especially along the lakeshore environment. Models do a poor job predicting ozone along the lakeshore but a good job from a regional basis. The hope is that the data collected will be able to improve the results of LADCO (and other) models and help future attainment planning efforts.